



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/373,576	08/13/1999	J.KEITH KELLY	8344-001-27	2727

30827 7590 08/10/2004

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON, DC 20006

EXAMINER

GARG, YOGESH C

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/373,576
Filing Date: August 13, 1999
Appellant(s): KELLY ET AL.

MAILED

AUG 13 2004

GROUP 3600

Kurt M. Eaton
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on May 3, 2004 and Supplemental brief filed on July 20, 2004.

Art Unit: 3625

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims of groups A, B, and C stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

Art Unit: 3625

5,726,884

STURGEON ET AL.

3-1998

Gerland Jim, and Winer, Mark, " Taking a Spade to the Web"; Buffalo News; Buffalo, N.Y.; Apr 7, 1998, pages 1-2, extracted on Internet on 01/15/2002 from Proquest database.

<http://web.archive.org/web/19990128180853/http://www2.garden.org>, pages 1-2, extracted on Internet on 01/16/2002 from Proquest database: <http://proquest.umi.com>, hereinafter, referred to as National Gardening.

Official Notice.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:-The ground(s) for rejection are reproduced below from the Final Office Action, paper # 18, and are provided here for the convenience of both the Appellant and the Board of Patent Appeals.

Quote : "

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 4, 8-11, 13-15, 21-24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan et al. (US Patent 6,477,531), hereinafter, referred to as Sullivan, in view of Gerland Jim, and Winer, Mark, " Taking a Spade to the Web, Buffalo News; Buffalo, N.Y.; Apr 7, 1998, pages 1-2, extracted on Internet on 01/15/2002 from Proquest database:

Art Unit: 3625

<http://proquest.umi.com>, hereinafter referred to as Gerland, and further in view of Web pages, as existed in January 1999, from <http://web.archive.org/web/19990128180853/http://www2.garden.org>, pages 1-2, extracted on Internet on 01/16/2002 from Proquest database: <http://proquest.umi.com>, hereinafter, referred to as National Gardening.

With regards to claims 1-2, 4, 8-11, 13-15, 21-24, and 26, Sullivan teaches a method and a support system to help customers with problems, diagnosing the problems and then offering a solution. See at least FIGS. 1-12, col.2, line 44-col.3, line 60, col.4, line 55-col.8, line 47, and col.11, lines 22-58, which teach that the user interacts with a computer system/server on a network via input/output devices, sending and receiving messages in response to each other, presenting the user with at least one query directed towards the symptoms of a problem observed by the user and identifying a solution based at least partially upon the user's responses to the inquiry, and the system includes a storage device for storing a database of relevant information, a user input/output device, a processor connected to the storage device and the user input/output device, the processor being configured to perform the steps of presenting the user queries/identifying information in the database based upon the said enquiry, Internet browser, and Internet. Sullivan does not teach that the problems/information required are related to gardening material. However, in the same field of electronic commerce, Gerland teaches that gardening websites exist which carry out business related to resolving gardening problems like dealing with pests, growing vegetables,, placing online orders for gardening material such as seeds, etc.. As per dictionary, pests include diseases or agents which destroy crops. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Sullivan to include the features of gardening sites such as resolving gardening problems, placing online orders for gardening material. Doing so would enable customers to use Sullivan's method and system to resolve gardening problems, place online orders for gardening material, as explicitly disclosed in Gerland.

Sullivan/Gerland does not disclose that the processor queries the user about a geographic region and the user furnishes the same information to the processor. However, in the same field of endeavor, National Gardening teaches that the user informs the processor a geographic location when queried by the processor for the same (see page 1, "Selecting a region") and processor provides gardening information as relevant to that geographic location. In view of National Gardening, it would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Sullivan/Gerland to include the feature of user informing a geographical region upon being prompted by the processor. Doing so helps the processor to respond with relevant information related tot hat region only. A website operates and interacts with global users whose gardening problems/requirements are related to the local weather and living conditions and these local weather and living conditions would vary in different parts of the country/world. For example in the month of December it will be a cold winter climate in Boston but down south in Orlando the temperatures may still be warm and as such the gardening problems/requirements in Boston would be different from Florida. Also there are different state controls and regulations for the use of pesticides/fertilizers. One state may allow the use of a fertilizer/pesticide but the other state may not do so.

Sullivan/Gerland/National Gardening further teaches identifying at least one gardening material based upon the inquiry, and offering the user the opportunity to purchase at least one gardening material relevant to the geographic location (see at least Gerland and National Gardening).

6. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening.

Art Unit: 3625

With regards to 3 method claim and 16 system claim, Sullivan/ Gerland/National Gardening teaches a method and system for identifying a gardening material as disclosed above in method claims 1 and system claim 13 respectively. Sullivan/ Gerland/National Gardening does not disclose displaying a label associated with the gardening material to the user. Official Notice is taken of both the notoriously well-known concept and benefits of displaying a label associated with the gardening material to the user in Sullivan/ Gerland/National Gardening. It would have been obvious to a person of an ordinary skill in the art at the time of the invention to include the concept of displaying a label associated with the gardening materials such as plants, seeds, fertilizers, insecticides to the user in Sullivan/ Gerland/National Gardening because it is universally known that gardening material contains hazardous materials in the form of chemicals and it is mandatory as per state laws to display directions for use, caution users against incorrect use of the contents, display safety measures on the exterior of the packages to eliminate the risk of any accident that can take place.

7. Claims 5-7, 18-20, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening in view of Sturgeon et al. (US Patent number 5,726,884), hereinafter, referred to as Sturgeon.

With regards to 4-7, 17-20, and 28-30, claims, Sullivan/ Gerland/National Gardening teaches a method and system for identifying a gardening material as disclosed above in method claims 3 and 26 and system claim 16. In Sullivan/ Gerland/National Gardening, National Gardening site further discloses that the inquiry is directed towards the user's region in the country (See page 1, "...Gardening Information For Your Region.....Select a region...."). Further, while analyzing the limitations of claims 3 and 16 above it was analyzed that label displays information about ingredients of the material, warnings, safety data etc. related to gardening material. Sullivan/ Gerland/National Gardening not disclose that at least one enquiry is directed towards the user's state, and label varies depending upon the user's state. However, Sturgeon teaches that label varies depending upon the user's state and enquiry is directed towards the user state (col.1, line 5-col.2, line 49, specially lines 7-12, ".... This invention relates to....regulatory, review of.....use, handle, and/or transport of chemical products.....considered hazardous to humans.....", and col.2, lines 1-6, "...These laws often have overlapping jurisdiction and are not always consistent with one another.....Several states.....have passed their own hazardous substance laws.....These laws still apply in those states and in many cases supersede their Federal counterparts..". Note: Sturgeon teaches that state laws differ for hazardous materials and therefore it will be mandatory to know the state to follow the laws of that state while using, handling or transporting hazardous materials like gardening materials, which include pesticides and fertilizers).

It would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Sullivan/ Gerland/National Gardening and include the feature that at least one enquiry is directed towards the user's state, and label to vary depending upon the user's state because states have different laws with regards to use, handling and transport of hazardous materials (as suggested in Sturgeon, col.2, lines 1-6) and knowing the state would enable the suppliers to supply hazardous materials like gardening materials including pesticides and fertilizers with labels displaying safety, caution and warning data in conformity with the laws of the state where the material is to be used.

8. Claims 12 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening.

Art Unit: 3625

With regards to claims 12 and 25, Sullivan/ Gerland/National Gardening teaches a method and a system for identifying gardening material as disclosed and analyzed in claims 1 and 13 respectively, above. Sullivan/ Gerland/National Gardening does not disclose displaying a list of retailers from which the gardening material is available. Official Notice is taken of both the old and well-known concept and benefits of displaying a list of retailers where the gardening material is available to the user. Referring a list of dealers to the buyers is old and well-known practice in the field of manufacturing, buying, and selling, e.g. selling gardening products through Home Depot or Loews, selling cars, electrical appliances, etc. Manufacturers do not want to sell directly to consumers, to save operating costs, but sell their items through dealers. Retailers store and sell material from several manufacturers. Therefore, it would be obvious to a person of an ordinary skill in the art at the time of the invention to display a list of retailers to the buyers so that they can buy gardening products from retailers like Home Depot, Loews or others, allowing them to browse and purchase material from several manufacturers from one place.

9. Claims 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan/ Gerland/National Gardening/Official Notice.

With regards to claim 27, Sullivan/ Gerland/National Gardening/Official Notice teaches all the limitations of the claim, as analyzed for claims 1-16, 18-25 above, except for adding product to purchase list, and check out process. However, these limitations are old and well known in purchasing on-line or otherwise.

When a person purchases items whether on-line or otherwise he has to add them to the purchase list and undergo through a checkout process to pay for them and own them. Therefore, It would be obvious in Sullivan/ Gerland/National Gardening/Official Notice to add product to purchase list when purchasing more than one item on-line or otherwise and then to go through a checkout process to make payment and own the items. "

Unquote:

(11) Response to Argument

With respect to independent claims 1, 13 and 26 which belong to Groups A, B and C respectively, the applicant argues (see appeal brief, page 7, line 5-page 9, line 1) that the problems solved by Sullivan et al. must be computer related and, more specifically, must be existent on the user's actual computer and therefore modification of Sullivan et al. using the teachings of Gerland et al. would render Sullivan et al. unsatisfactory for its intended purpose and change the principle of operation of Sullivan et al.. The examiner respectfully disagrees.

Art Unit: 3625

Sullivan et al. discloses the use of diagnostic map that executes on the client machine, communicates with the support center and generates a search string **as his preferred embodiment** (see col.2, lines 63-66, " In *the preferred embodiment*, the search string is generated dynamically through the use of a diagnostic map that executes on the client machine when the self-help session is initiated. "). However, Sullivan also discloses use of architectures not using a diagnostic map on client machine to communicate with support center, as illustrated below:

Sullivan et al. discloses the use of a client-server architecture (see at least col.2, lines 44-55, " These and other objects of this invention are provided in a method, system and computer program product for automated technical support in a computer network having a client machine and at least one technical support server. **When the user desires technical support, a technical support interface is launched. The user is then prompted to select a general problem area. In response to a user query, the system automatically serves a self-help home page, (or template) to the user's interface. Preferably, the interface has a Web browser navigation metaphor to provide the user with a comfortable and intuitive interaction with the self-help system** ") which teaches receiving a request from a user for help and then the user is prompted to select a general problem area and also provided with interactive interface to respond to his queries. Such client-server architectures are adaptable in providing customer support irrespective of the type of products and services, that is this architecture would allow to customers send queries related to gardening problems, computer problems, software problems, warranty problems, appliances problems, consumable item problems, and so on.

Art Unit: 3625

Sullivan et al. also discloses, as admitted prior art, providing support center using techniques involving a network "login" or accessing a web server to run support contents in the form of FAQs (see at least col.1, lines 38-55, "The most common method of technical support is still a telephone conversation with tech support personnel. Other known techniques involve a network "login" to the remote node so that the conditions may be evaluated from the technical support center's viewpoint. The network connection may be used to run a diagnostic program on the remote node, or "self-help" fix-it programs may be downloaded to the remote node and executed there. This approach involves having the user access a Web server with support content in the form of support notes or FAQs. The user attempts to use this information to "self service" his or her own problem. On its face, this strategy appears sensible as, theoretically, an effective self-service strategy would let users solve problems for themselves (e.g., through a Web browser), with the result of lower call volumes and better service. "). These architectures, as admitted prior art, in Sullivan et al. do not require that the problems must be existent on the actual user's computer but are adaptable to support customers in solving their problems by diagnosing them and offering solutions.

The examiner would like to refer to the following court cases:

In re Wiseman, 201 USPQ 658 (CCPA 1979) "Mere recognition of latent properties in the prior art does not render nonobvious an otherwise known invention."

In re Shepard, 138 USPQ 148 (CCPA 1963) "In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the reasonable inferences which one skilled in the art would logically draw therefrom."

In re Bozek, 163 USPQ 545 (CCPA 1969) "Reference disclosure must be evaluated for all that it fairly suggests and not only for what is indicated as preferred."

Merck & Co. Inc. v. Biocraft Laboratories Inc., 10 USPQ2d 1843 (CA FC 1989) "A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments."

In re Boe, 148 USPQ 507 (CCPA 1966) "Rejections may be based on prior art teachings phrased in terms of a non-preferred embodiment or as being unsatisfactory for the intended purpose."

Art Unit: 3625

In re Susi, 169 USPQ 423 (CCPA 1971) "Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments."

In re Heck, 216 USPQ 1038 (Fed. Cir. 1983) "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain."

The above court cases teach that the examiner should consider the total broader disclosure rather than confining to preferred embodiments/teachings of the disclosure. Keeping in line with these court cases, examiner has considered systems and methods (see Sullivan et al. col.1, lines 38-55 and col.2, lines 44-55, as analyzed above) disclosing technical customer support centers for solving the problems of customer via an interactive communication network for combining with Gerland's disclosure of operating Web sites which help customers to browse, order catalogs, find gardening tips, place online orders for gardening related items, interactive communication in Q & A area (see Gerland, pages 1 and 2). The examiner does not see in any way destroying the architectures of Sullivan et al. (col.1, lines 38-55 and col.2, lines 44-55, as analyzed above) by combining Gerland's teachings, as analyzed above, because they are analogous when it comes to resolving the problems of users via a communication network.

Apropos Appellant's arguments (see page 9, lines 1-9), that the examiner has failed to set any motivation to combine Sullivan et al. with Gerland et al. but instead it is a hindsight reasoning to combine these two references. The examiner respectfully disagrees. The examiner acknowledged in the Final office action, as reproduced above, that Sullivan et al. does not disclose solving customer's problems related to gardening

Art Unit: 3625

matter and therefore suggested to modify Sullivan et al. to combine the disclosure of Gerland, which as analyzed above, teaches operating Web sites which help customers to browse, order catalogs, find gardening tips, place online orders for gardening related items, interactive communication in Q & A area. The examiner's motivation to modify Sullivan et al. to incorporate Gerland's teaching was that Sullivan's architecture could be modified to resolve gardening related problems of the users, placing online orders for gardening material as explicitly suggested in Gerland because the Sullivan's architecture, as discussed above, would allow users to access a web site dealing with gardening matter (as disclosed in Gerland), and the server at the web site could prompt the user to select a problem area and provide answers.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, all the information and knowledge have been used from prior art of Sullivan et al. and Gerland and does not include knowledge from the applicant's specification to arrive at the judgment of obviousness and therefore it is not an hindsight reasoning.

The applicant further argues (see page 9, line 22-page 10, line 7), " For similar reasons as set forth above, Appellants respectfully submit.....As such, the Examiner has failed to set forth any suggestion or motivation to modify Sullivan et al. in view of Gerland et al. with National Gardening. Absent of any objective reason to modify Sullivan et al. in view of Gerland et al. with National Gardening. Appellants contend the applied references have merely been combined with the benefit of Appellant's disclosure via impermissible hindsight reasoning ". The examiner disagrees. The examiner acknowledged in the Final office action, as reproduced above, that Sullivan et al. in view of Gerland does not disclose the processor querying the user about geographic location and the user furnishes the same information to the processor. In order to overcome this deficiency, the examiner suggested to modify Sullivan et al. in view of Gerland to combine the disclosure of National Gardening. National Gardening teaches that the user informs the processor a geographic location in response to being queried by the processor for the same (see National Gardening page 1 dialog box, " *Selecting a region* ") to respond to queries related to gardening. The examiner's motivation to modify Sullivan et al. in view of Gerland to incorporate National Gardening teaching was to enable Sullivan et al. in view of Gerland to respond with relevant information related to that region only because a website operates and interacts with global users whose gardening problems/requirements are related to the local weather and living conditions and these local weather and living conditions would vary in different parts of the country/world. For example, in the month of December it will be a cold winter climate in Boston but down south in Orlando the temperatures may still be warm and as such

Art Unit: 3625

the gardening problems/requirements in Boston would be different from Florida. Also there are different state controls and regulations for the use of pesticides/fertilizers. One state may allow the use of a fertilizer/pesticide but the other state may not do so.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, all the information and knowledge have been used from prior art of Sullivan et al. in view of Gerland and National Gardening and does not include knowledge from the applicant's specification to arrive at the judgment of obviousness and therefore it is not an hindsight reasoning.

Apropos appellant's arguments (see Appeal Brief page 10, line 15-page 11, line 6), that none of the cited references teach or suggests " querying the database and identifying at least one gardening material based upon a response to at least one of the querying", as recited in claim 1, " wherein at least one inquiry is directed towards the user's geographic region and the at least one gardening material is identified based at least partially upon the user's geographic reason," as recited in claim 13, and "querying the user for a type of gardening problem....determining whether the type of gardening problem is a pest problem, fertilizer need problem, or information pertaining to seed;

Art Unit: 3625

and generating a list of products based partially upon geographic region," as recited in claim 26. The examiner disagrees because the combination of prior arts of Sullivan et al., Gerland and National Gardening teach all these limitations.

Gerland discloses Q and A area on gardening Web sites (see page 2, last paragraph. Note: Gardening websites correspond to databases as claimed because it is the website to whom the queries are sent and therefore is equivalent to database to whom the queries are sent. Further the web sites store information or are linked to other databases in order to be able to respond to user's queries with answers on gardening matters as disclosed in Gerland) where the users could query and receive solutions/responses to their gardening related questions using a client server-architecture as disclosed in Sullivan et al, and analyzed above. Gerland further teaches that the gardening related query to the web site from the customer could relate to a gardening material such as, vegetables, Dutch flower bulbs, information about annuals/flowers, tips on landscaping, composting, etc.(see Gerland, whole page 2). National Gardening teaches querying the user about his geographic location, as already analyzed above. As per the motivation (see above) provided for combining National Gardening with Sullivan in view of Gerland the system would respond to the user's queries (which could relate to tips, advice, orders related to gardening matter/material , as disclosed in Gerland) keeping in mind the geographic location.

Sullivan in view of Gerland and further in view of National Gardening teaches querying the user for a type of gardening problemdetermining whether the type of gardening problem is a pest problem, fertilizer need problem, or information pertaining

Art Unit: 3625

to seed; and generating a list of products based partially upon geographic region," as recited in claim 26 because Sullivan provides the architecture to query the user to select a problem, as analyzed above, Gerland teaches that those queries relate to gardening and determining if those queries relate to one of pest problem, fertilizer need problem, or information pertaining to seeds (see Gerland page 1, which teaches receiving queries about growing plants from seeds on Burpee Seeds site and responding accordingly, see page 1, receiving queries about pest problems and page 2 Ortho Web site responding to such queries, and see page 2, " www. Gardens.com " web site for receiving queries and providing tips about fertilizer needs such as composting. Note: In order to respond to the queries with the right answer it would be inherent to determine what type of problem it is, i.e. relating to a pest, or fertilizer or seed.) and National Gardening teaching to consider also the geographic location while responding to user's queries.

In view of the foregoing, rejection of independent claims 1, 13 and 16 belonging to groups A, B and C respectively, as presented in the Final office action, is sustained.

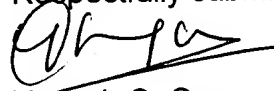
Apropos appellant's arguments regarding claims 3 and 16, claims 5-7, 18-20, and 28-30, 4-7, 12 and 25, and 27 (see Appeal Brief, page 11, line 7-page 13, line 12) rejection of these claims is sustained for the same reasons as analyzed above for independent claims 1, 13, and 16. Since the independent claims are the broadest claims in each group rejection of all other claims in all the three groups A, B and C is sustained, see MPEP 1206, Appeal Brief Content and provisions set forth in 37 CFR 1.192(c)(7) Board shall select the broadest claim in a group consisting two or more

Art Unit: 3625

claims and will consider only that claim in absence of a separate statement that the claims do not stand or fall together and arguments reasoning why the claims are considered separately patentable.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Yogesh C. Garg
Primary Examiner
Art Unit 3625.

YCG
August 6, 2004

Conferees



Joseph Thomas
Appeal Conference Specialist TEC 3600
Supervisor -Art Unit 3626



Jeffrey A. Smith
Acting Supervisor
Art Unit 3625